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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

The former Yugoslav Republic of Macedonia

1. Introduction: Overview of the legal and institutional framework of the former Yugoslav Republic of Macedonia in the context of implementation of the United Nations Convention against Corruption

The former Yugoslav Republic of Macedonia signed the United Nations Convention against Corruption on 18 August 2005 and ratified it on 13 April 2007. The Convention entered into force domestically on 13 May 2007.

The former Yugoslav Republic of Macedonia is a unitary State with a parliamentary type of governance. According to article 1 of its Constitution, the former Yugoslav Republic of Macedonia is a sovereign, independent, democratic and social State with its sovereignty deriving from and belonging to its citizens. The constitutional organization of power is based on its division into legislative, executive and judicial.

The Assembly is a representative body of citizens in which the legislative power is vested. At present, it is composed of 123 representatives, directly elected for a term of four years. The mandate of a representative is terminated if he/she is sentenced for a criminal offence for which a sentence of at least five years is prescribed.

The President is elected directly for a term of five years, for a maximum of two terms. The Constitutional Court decides on the accountability of the President by a two-third majority. If acknowledged accountable, the term of the President can be terminated.

The executive power is vested in the Government. The Prime Minister and Ministers cannot be members of Parliament. The Prime Minister enjoys immunity and the Parliament decides on his/her immunity. The office of the Prime Minister and that of a Minister is incompatible with the performance of any other public office or profession.

The judicial power is exercised by autonomous and independent courts which rule on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution.

According to article 118 of the Constitution, "international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by the laws."

The laws most relevant to the fight against corruption are the Criminal Code (CC); the Law on Civil Servants; the Law on the Management of Confiscated Property, Proceeds and Objects Seized in Criminal and Misdemeanour Procedure; the Law on Criminal Proceedings (CP); the Law on the Prevention of Corruption; the Law on Witness Protection; the Law on Public Servants and the Law on International Cooperation in Criminal Matters.

The institutions most relevant to the fight against corruption are the State Commission for the Prevention of Corruption; the Public Prosecutor's Office for the Fight against Organized Crime and Corruption; the Specialized Department for Proceeding Cases of Organized Crime and Corruption of the First Instance Court

Skopje 1; the Anti-corruption Unit of the Ministry of Interior; the Financial Police Administration of the Ministry of Finance; the Anti-corruption Department of the Public Revenue Office; and the Integrity Department of the Customs Administration.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is criminalized pursuant to articles 358 and 357 of the CC respectively. Both articles cover bribery of national public officials, foreign public officials as well as officials of a public international organization.

Active bribery in the private sector (art. 253-a) and the active trading in influence (art. 358-a) were introduced as new criminal acts through the amendments of the CC of 2011. Prior to these amendments, only passive bribery in the private sector (art. 253) and passive trading in influence (art. 359) had been criminalized. The reviewing experts found all aforementioned provisions to be in line with the Convention. However, they were not in a position to judge on the effective implementation of the provisions on the criminalization of bribery in the private sector due to lack of related cases.

Money-laundering, concealment (arts. 23 and 24)

Article 273 of the CC criminalizes money-laundering, including self-laundering, although few cases had been taken forward under this provision.

As for predicate offences to money-laundering, the former Yugoslav Republic of Macedonia has adopted an all-crime approach, covering any criminal act committed within the national territory or abroad. Ancillary offences to money-laundering, including attempt (art. 19), instigation (art. 12) and conspiracy (art. 393), are also covered pursuant to the general provisions of the CC.

The national authorities confirmed that it was sufficient to establish the criminal nature of the proceeds without the need to identify the predicate offence for a money-laundering conviction.

The former Yugoslav Republic of Macedonia promised to send copies of its laws in accordance with article 23, subparagraph 2(d), of the Convention.

The concealment or continued retention of criminal proceeds is criminalized as a separate offence pursuant to article 261 of the CC, which does not prescribe a term of retention of such proceeds as an element of the incrimination.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The former Yugoslav Republic of Macedonia has criminalized embezzlement, misappropriation or other diversion of property by a public official and abuse of functions in line with articles 17 and 19 of the Convention pursuant to articles 353 to 356 of the CC.

Article 355 (fraud in the service) incriminates intentional acquiring of an unlawful property benefit of the official person for himself/herself or for another, by submitting false bills or by deceiving the authorized person in some other way to effect an unlawful payment. The type of property which may be diverted or the actual criminal act is not specified, and therefore all kinds of property and diversion are covered.

Article 354 (embezzlement in the service) and article 356 (use of resources for personal benefit while in service) are both related to the type of property which a person can be authorized to hold/use in service or while performing duties of service (and may be physically returned).

Article 353 criminalizes the "abuse of official position and authorization", which covers the diversion of any kind of entrusted property committed while the perpetrator uses his/her official position or authorization, by exceeding the limits of his official authorization, or by not performing his/her official duty.

Embezzlement in the private sector is addressed in articles 354 and 355 of the CC for acts committed by "a responsible person in a legal entity". For the implementation of article 22 of the Convention, article 239 of the CC on concealment is also relevant.

The former Yugoslav Republic of Macedonia has criminalized illicit enrichment pursuant to article 359-a, introduced in 2009 to the CC. No cases have been brought forward on the basis of that article.

Obstruction of justice (art. 25)

Article 368-a of the CC criminalizes the illegal influencing of witnesses and makes it a general crime punishable by imprisonment of one to three years. Although "intimidation" and "promising and giving of an undue advantage" are not specifically mentioned, those are covered by the term "or in any other manner influencing a person".

Article 368 of the CC criminalizes the act of preventing the collection of evidence. Although it does not reflect the wording of article 25, paragraph (a), of the Convention, the term "or makes useless" covers all kinds of interference in the production of evidence.

Article 144 of the CC on "threatening the safety" is broad enough to cover all cases of threat, including threats directed at law enforcement officials.

Article 375 of the CC criminalizes the use of physical force, threats or intimidation to interfere with the exercise of official duties by judiciary employees.

Article 382 and 383 of the CC criminalize the use of physical force or threats against official persons including law enforcement officials.

Liability of legal persons (art. 26)

The criminal liability of legal persons is established in article 28-a of the CC and emphasized by the legal provisions for the criminal act of "giving a bribe" (art. 358, para. 5) and "receiving a reward for unlawful influence" (art. 359, para. 6). Such liability does not preclude the criminal liability of the natural persons who committed the offences.

The liability of legal persons is also recognized in civil and administrative procedures pursuant to article 70 of the Law on civil procedure and article 47 of the Law on general administrative procedure.

Adequate criminal and non-criminal sanctions are provided for when the liability of a legal entity is recognized. Those sanctions include fines or other monetary penalties, and can include termination of status of the legal entity, prohibition on participating in public contracting or/and confiscation of property and property gain, and forfeiture of objects.

Participation and attempt (art. 27)

The CC contains general provisions criminalizing the participation in an offence, namely article 22 on "joint perpetration", article 23 on "instigation" and article 24 on "assistance".

According to article 19 of the CC, attempted crimes are criminalized when the crime is punishable by imprisonment of five years or more or when the law explicitly prescribes a sentence for an attempt of such crime.

Most corruption offences are punishable by imprisonment of less than five years, which leaves their attempt unpunished unless the law explicitly provides otherwise, like in article 382 of the CC on "preventing an official person from the performance of an official act", and article 375 on "coercion of a judiciary employee".

Preparation to commit a crime is not criminalized itself, except in relation to a few non-corruption-related offences.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The former Yugoslav Republic of Macedonia has adopted penalties for corruption offences that range from a fine up to ten years' imprisonment, taking into account the gravity of the offence.

Immunities do not seem to constitute an impediment to the effective prosecution of such offences.

Prosecution follows the principle of legality.

Regarding procedures relating to release pending trial or appeal, the measures described in Chapter XVI of the CP are applicable to corruption offences. These include the prohibition to leave the temporary or permanent place of residence, an obligation for the defendant to report occasionally to a certain official person, and the temporary confiscation of a passport.

Early release is possible after having served half of the term of imprisonment or having served one third of the term of imprisonment if special circumstances concerning the personality of the convicted evidently show that the aim of the sentence has been achieved.

A public servant may be suspended from an institution in the cases where a criminal procedure has been initiated against him/her. Furthermore, several legal provisions exist regarding the termination of employment of a convicted public official.

The liability for a criminal offence does not exclude the disciplinary liability of the civil servant, pursuant to the Law on Civil Servants.

The Law on Execution of Sanctions provides for a number of measures to promote the reintegration of convicted offenders into society including training, counselling and employment assistance.

The national legislation provides for the possibility of plea bargaining in addition to different protection measures for collaborators to justice.

Protection of witnesses and reporting persons (arts. 32 and 33)

The former Yugoslav Republic of Macedonia has a comprehensive legal framework and a specialized unit within the Ministry of Interior for witness protection. A wide range of protection can be provided for persons who give a statement or act as a witness in a procedure for a corruption offence, including relocation and change of identity of witnesses and their family.

The person has the right to compensation for damage that he or a member of his family may suffer owing to the statement given or appearance as a witness. Such compensation is paid with funds from the national budget. The protection also applies to victims insofar as they are witnesses.

The CP contains a range of evidentiary rules to ensure the safety of witnesses in danger, including the possibility for an examination conducted with the assistance of technical devices for transfer of picture and sound (distorting the face and the voice).

The national authorities reported on different provisions on the protection of reporting persons (Law on the Prevention of Corruption; CC; Law on Labour Relations; Law on Protection from Harassment in the Workplace). However, the reviewing experts noted the fact that these provisions were fragmented, as well as the absence of ad hoc whistle-blower protection legislation. The former Yugoslav Republic of Macedonia indicated that amendments to the Law on the Prevention of Corruption are currently being prepared in order to introduce a whistle-blower protection system and provide systematic and institutional protection of whistle-blowers.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The CC regulates confiscation. Article 98 provides for the confiscation of the direct and indirect proceeds of a crime, from the offender or from third parties, including value-based confiscation.

Article 98-a provides for "enlarged confiscation" which could be applied when the property exceeds the legal incomes of the offender and originates from a crime committed within a criminal association or which is related to money-laundering punished by imprisonment of at least four years.

Confiscation also covers property, equipment or other instrumentalities used in or destined for use in offences.

The CP allows for a range of investigative measures available for the identification, tracing, freezing or seizure of criminal proceeds and instrumentalities.

The former Yugoslav Republic of Macedonia has a special and comprehensive Law on the Management of Confiscated Property, Proceeds and Objects Seized in Criminal and Misdemeanour Proceedings. This Law establishes an agency with a wide scope of work.

Pursuant to a request by the public prosecutor, the court may order the production and seizure of banking and commercial records. The preliminary procedure judge should decide about the request by the public prosecutor immediately, and no later than 12 hours from receipt of the request. In emergency cases, the public prosecutor may impose the mentioned measures without a court order (art. 200 of the CP).

Statute of limitations; criminal record (arts. 29 and 41)

The period of limitation for criminal cases ranges from 2 to 30 years, depending on the severity of the sentence prescribed for a specific crime, and starts on the day the crime was committed or the consequence occurred.

According to article 39 of the CC, previous convictions can be taken into consideration when deciding on the severity of a sentence. The governmental authorities confirmed that this provision was not limited to cases of prior domestic convictions but extend also to foreign convictions.

Jurisdiction (art. 42)

Jurisdiction over corruption offences is established in the CC, Chapter 12 (art. 116: territorial jurisdiction; art. 118: active personality jurisdiction; art. 119: passive personality jurisdiction). The former Yugoslav Republic of Macedonia also adopted additional grounds of criminal jurisdiction, other than those described in article 42 of the Convention (art. 117: universal jurisdiction).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

According to articles 5-a and 46 of the Law on the Prevention of Corruption, legal acts resulting from corruption are null and void and any person damaged by a corruption act has a right to request damage compensation (actual damage and lost profit) from the offender.

The CP also contains provisions dealing with the rights of victims (art. 53) and the rights of the injured party (art. 57). The victim of a crime has the right to participate in the criminal proceedings for the purpose of filing a legal property claim for damages.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The former Yugoslav Republic of Macedonia has several authorities specialized in combating corruption through law enforcement. The State Commission for the Prevention of Corruption, established in 2002, can instigate an initiative for criminal prosecution of elected or appointed officials, and track and follow the assets and changes of assets of public officials.

The Public Prosecutor's Office for Organized Crime and Corruption is competent to prosecute a series of crimes. Those crimes are brought before the Specialized Department for Cases of Organized Crime and Corruption of the First Instance Court Skopje 1.

The anti-corruption institutional framework also comprises the Anti-corruption Unit of the Ministry of Interior, the Financial Police Administration of the Ministry of Finance, the Anti-corruption Department of the Public Revenue Office, and the Integrity Department of the Customs Administration.

The independence of those specialized bodies is ensured by law. Their staff is provided with adequate training and resources.

A number of legal provisions mandate cooperation between public authorities and authorities responsible for investigating and prosecuting criminal offences. Public officials are legally required to report every punishable act related to corruption.

Other legal provisions mandate cooperation between the private sector, particularly financial institutions, and the State prosecution services.

Article 58 of the Law on the Prevention of Corruption requires the proactive reporting, by all employees in financial institutions, of suspicious transactions related to corruption. Article 112 on the Law on Banks provides that requests for documentation from State prosecutors cannot be denied by financial institutions on grounds of confidentiality. Article 30 of the Law on Prevention of Money Laundering and Financing of Terrorism establishes an obligation for financial institutions and other designated entities to report suspicious transactions to the financial intelligence unit (FIU). Hotlines for reporting corruption have also been opened for the public.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The fact that different initiatives have been taken by the national authorities to encourage the cooperation with the private sector as well as with the public;
- The fact that it is sufficient to establish the criminal nature of the proceeds, without the need to identify the predicate offence, for a money-laundering conviction was positively noted by the review team as conducive to the pursuit of money-laundering cases;
- The fact that a person who has given a statement or witnessed in a procedure for corruption has the right to compensation for damage paid with funds from the national budget (art. 19 of the Law on the Prevention of Corruption);
- The possibility of enlarged confiscation;
- The fact that the enforcement of the special measures involving confiscation of property and seizure of objects has no statute of limitation;
- The existence of a special law and a special agency dealing with the administration of frozen, seized or confiscated property.

2.3. Challenges in implementation

While noting the advanced anti-corruption legal system of the former Yugoslav Republic of Macedonia, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks, to be taken into account for action or consideration by the competent national authorities

(depending on the mandatory or optional nature of the relevant requirements of the Convention):

- With regard to bribery in the private sector, the former Yugoslav Republic of Macedonia should consider a wider use of articles 253 (passive bribery) and 253-a (active bribery) of the CC (art. 21 of the Convention);
- The former Yugoslav Republic of Macedonia should furnish copies of its laws criminalizing the laundering of proceeds of crime to the Secretary-General of the United Nations (art. 23, para. 2(d) of the Convention);
- With regard to illicit enrichment, the former Yugoslav Republic of Macedonia is encouraged to increase the effective implementation of article 359-a of the CC (art. 21 of the Convention);
- The former Yugoslav Republic of Macedonia may wish to extend the scope of application of the domestic provision on the criminalization of attempt to cover all corruption offences (art. 27, para. 2 of the Convention);
- The former Yugoslav Republic of Macedonia is encouraged to continue efforts to enact specific legislation on the protection of reporting persons (art. 33 of the Convention).

3. Chapter IV: International cooperation

The former Yugoslav Republic of Macedonia has a comprehensive special law on international cooperation in criminal matters. However, it was difficult to assess in detail the practice of providing international legal assistance in corruption cases, due to the absence of relevant data.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The former Yugoslav Republic of Macedonia has a two-tier extradition system in place: a regular procedure whereby the final decision is taken by the Minister of Justice, and a simplified procedure when the person agrees to be extradited, whereby the final decision is taken by the Judicial Council. Both are regulated in the Law on International Cooperation in Criminal Matters (LICCM).

Requests for extradition received from a foreign State should be forwarded through diplomatic channels or sent directly to the Ministry of Justice which, will then submit it to the competent judicial authority.

The competent judge may detain the person whose extradition is sought for a maximum period of 180 days. He may also impose another measure for securing the presence of that person. His decision may be subject to an appeal addressed to the criminal council of the Court in a period of 24 hours after the delivery of the decision.

Extradition in the absence of dual criminality is at present not possible.

Although extradition is not conditional on the existence of a treaty and could be based on the principle of reciprocity, the former Yugoslav Republic of Macedonia

considers the Convention as a legal basis for extradition, provided the conditions of the LICCM are met.

Offences are extraditable if the conditions related to dual criminality and the minimum period of imprisonment are satisfied. Accordingly, most corruption offences which are punishable by at least one year are thus extraditable offences. Corruption offences which do not satisfy the one year imprisonment condition could be extraditable on the basis of the direct applicability of the Convention pursuant to Article 118 of the Constitution.

Criminal offences related to a breach of the regulations on taxes, fees, duties and foreign exchange operations are extraditable.

The former Yugoslav Republic of Macedonia does not extradite its citizens unless provided otherwise by international or bilateral agreements. The possibility of submitting a case without undue delay to its competent authorities for the purpose of prosecution is introduced in the country's legislation, but the principle *aut dedere aut judicare* is not regulated by statutory law and has never been applied.

A foreign sentence can be enforced provided that the condition of dual criminality is met and that the foreign criminal judgement is final, enforceable and has been rendered *in presentia*.

The former Yugoslav Republic of Macedonia is a party to the European Convention on Extradition and three of its Additional Protocols, and has concluded a number of bilateral treaties on extradition, including with countries from the region (Serbia, Croatia, Montenegro and Bosnia and Herzegovina).

None of the corruption offences is deemed a political offence. Moreover, the former Yugoslav Republic of Macedonia does not authorize extradition based on political grounds and its legislation guarantees fair treatment to any person concerning whom an extradition request is made while proceedings are under way.

Part two of the LICCM provides for the transfer of sentenced persons. The former Yugoslav Republic of Macedonia is also a party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol and has signed relevant bilateral agreements (with Albania, Bosnia and Herzegovina, Montenegro, Serbia, Slovenia and Turkey).

The LICCM (chapter III) provides for the possibility of taking over of criminal proceedings in case of dual criminality (art. 43, para. 1). The Law also provides for the possibility of transferring to a foreign State criminal proceedings for criminal offences for which a prison sentence up to ten years is foreseen (art. 47, para. 3 of the Law).

Mutual legal assistance (art. 46)

The LICCM provides for a wide range of mutual legal assistance (MLA) measures. The central authority responsible and authorized to receive MLA requests and either to execute them or to transmit them to the competent authorities for execution is the Ministry of Justice, Department for International Legal Assistance.

An MLA request should be, as reported by the national authorities, in Macedonian and should be sent in writing. It can be received electronically or through another

way of telecommunication for which a record shall be kept, and the original shall be sent through regular mail.

The former Yugoslav Republic of Macedonia may provide assistance irrespective of the existence of a treaty. Furthermore, dual criminality is not a precondition to render assistance. MLA requests regarding physical and legal persons are treated equally.

The LICCM provides for the interrogation through videoconference and through telephone conference, and the former Yugoslav Republic of Macedonia has had previous relevant experience. The LICCM also clearly provides for the delivery of spontaneous information.

The former Yugoslav Republic of Macedonia will comply with a request for confidentiality; if that is not possible, it will notify the foreign requesting authorities immediately.

Bank secrecy and fiscal matters are not grounds for declining an MLA request. Such a request may be denied if it is based on considerations of racial, ethnical and social affiliation or religious beliefs. The decision for rejection should be elaborated upon unless otherwise specified by an international agreement.

Article 17 of the LICCM stipulates the urgency of acting upon receiving the letter rogatory by the foreign competent authority.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The former Yugoslav Republic of Macedonia has put in place a regulatory framework and has concluded many bilateral agreements that provide for the international exchange of information for purposes of law enforcement.

The national law enforcement authorities have channels of communication through, inter alia, the International Criminal Police Organization (INTERPOL) and the European Police Office (Europol). Furthermore, the national FIU is a member of the Egmont Group of Financial Intelligence Units.

The former Yugoslav Republic of Macedonia has been an observer of the Camden Assets Recovery Inter-Agency Network (CARIN) since July 2014. The former Yugoslav Republic of Macedonia has also been a member State of European Partners against Corruption (EPAC) since 2009.

The conduct of joint investigation teams is regulated in article 38 of the LICCM. The domestic competent authorities for detection and prosecution of organized crime and corruption can be part of the joint investigation teams with the foreign competent authorities. However, the former Yugoslav Republic of Macedonia did not take measures to promote the exchange of personnel and other experts, including the posting of liaison officers.

The LICCM and the CP, together with a large number of bilateral agreements on international cooperation in criminal matters to which the former Yugoslav Republic of Macedonia is a party, authorize and organize the use of special investigative techniques in matters of organized crime and corruption.

Chapter XIX of the CP provides for special investigative measures which could be used in corruption cases including the monitoring and recording of telephone and other electronic communications, the monitoring and recording of conversations with technical devices, secret access to and search of computer systems, simulated offering and receiving bribes, controlled delivery and the use of undercover agents.

The former Yugoslav Republic of Macedonia established a department for undercover operations in 2005 within the Division for Organized or Serious Crime. This department includes a unit for undercover police officers, a unit for interception of communications, a unit for surveillance, monitoring and documentation and a unit for protection of witnesses.

There appear to be no challenges regarding the admissibility in court of evidence derived from special investigative techniques.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:

- The fact that the former Yugoslav Republic of Macedonia has a comprehensive special law on international cooperation in criminal matters with provisions on all modalities of international cooperation in criminal matters;
- The fact that mutual legal assistance is not subject to the dual criminality requirement.

3.3. Challenges in implementation

While noting the advanced anti-corruption legal system of the former Yugoslav Republic of Macedonia, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks, to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant requirements of the Convention):

- The reviewing experts highlighted the need for the former Yugoslav Republic of Macedonia to put in place and render fully operational an information system compiling in a systematic manner statistical data and information on extradition and mutual legal assistance cases with a view to facilitating the monitoring and tracking of such cases and assessing the effectiveness of implementation with regard to, among others, the duration of MLA and extradition proceedings, and encouraged the national authorities to continue their efforts in this regard;
- The former Yugoslav Republic of Macedonia should take effective measures to promote the exchange of personnel and other experts, including the posting of liaison officers;
- In the interests of greater legal certainty in the absence of applicable extradition treaties, the former Yugoslav Republic of Macedonia should take measures to more specifically address the *aut dedere aut judicare* principle in its domestic legislation;

- The former Yugoslav Republic of Macedonia may wish to consider removing the limitation contained in article 47, paragraph 3, of the LICCM, whereby the reassignment of criminal procedure may only be granted for offences for which a prison sentence of up to ten years is foreseen.

3.4. Technical assistance needs identified to improve implementation of the Convention

The former Yugoslav Republic of Macedonia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the articles of Chapter IV of the Convention:

- Capacity-building in the area of extradition and mutual legal assistance;
- Training for judges and public prosecutors on the implementation of Chapter IV of the Convention;
- Software for collecting, keeping and processing statistical data for cases of international legal assistance;
- Summary of good practices/lessons learned;
- On-site assistance by a relevant expert;
- Legal advice.